IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 8.9.2006

Coram:

The Hon'ble Mr.JUSTICE S.RAJESWARAN

C.R.P.(PD) No.810 of 2004

1.Venkatachalam
2.Palanivel
3.Devendran

.. Petitioners/Respondents

vs.

1.Nallathambi
2.Nallammal
3.Selvaraj
4.Krishnan

.. Respondents/Pettiioners

Revision Petition filed against the order dated 28.1.2004, passed in I.A.No.1766/2003 in O.S.No.378/2002, on the file of the District Munsif, Harur.

For Petitioners : Mr.B.Manoharan
For Respondents : Mr.P.Valliappan

ORDER:

This Revision Petition has been filed against the order dated 28.1.2004, passed in I.A.No.1766/2003 in O.S.No.378/2002, on the file of the District Munsif, Harur.

2. The plaintiffs are the revision petitioners. The suit was filed for declaration and permanent injunction. I.A.No.1766/2003 was taken up by the respondents/defendants seeking to appoint an advocate-commissioner to note down the physical features of the suit property. A counter was filed and the petition was resisted by the plaintiffs.

3. The trial court by order dated 28.1.2004, considering the rival submissions, appointed an advocate-commissioner.

4.The learned counsel for the petitioners/plaintiffs submitted that earlier, advocate-commissioner was appointed by the trial court in I.A.No.1808/2002 taken out by the petitioners/plaintiffs and the

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commissioner has already completed his visit and submitted a report. While so, the attempt made by the respondents/defendants by filing an application in I.A.No.1766/2003 for the very same relief is not at all maintainable and the trial court has not rightly considered the same.

5.The learned counsel for the respondents submitted that as stated in the fair order of the trial court, the 1st advocate commissioner appointed by the trial court at the instance of the petitioners/plaintiffs, could not execute the warrant due to non-cooperation of the petitioners/plaintiffs and therefore the respondents were compelled to file an application for appointment of an advocate-commissioner for the very same purpose and the same is maintainable. Therefore, according to the learned counsel for the respondents, the said application is maintainable both in law and on facts. It is also his contention that there is no infirmity nor irregularity in the order passed by the trial court.

6.It is not in dispute that the revision petitioners themselves as plaintiffs in the suit filed I.A.No.1808/2002 for appointment of an advocate commissioner to visit the suit property, to note down the physical features and to measure the same with the help of a qualified surveyor. But the advocate commissioner appointed by the trial court in I.A.No.1808/2002 returned the warrant on 8.10.2003 with the report stating that she could not execute the warrant due to the non-cooperation of the petitioners/plaintiffs. Even though it was specifically pleaded in the affidavit filed in I.A.No.1766/2003, it was not denied by the revision petitioners herein in the counter affidavit filed in I.A.No.1766/ 2003, thereby it is proved that the revision petitioners did not extend any cooperation to the advocate commissioner appointed by the trial court in I.A.No.1802/2002 to inspect the property and to execute the her work.

7.Therefore the respondents/defendants filed an application in I.A.No.1766/2003 for appointment of an advocate commissioner to note down the physical features and measure the property with the help of a qualified surveyor and to file a report. What was attempted by the respondents/defendants is only to revive the attempt made and abandoned by the revision petitioners/plaintiffs for reasons best known to them.

8.In such circumstances, the revision petitioners could not have any objection for the appointment of an advocate commissioner to note down the physical features and the trial court has rightly allowed the application.

9.As such, there is no infirmity nor illegality in the order passed by the trial court on 28.1.2004 in I.A.No.1766/2003 in O.S.No.378/2002 warranting interference by this court under Article

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227 of the Constitution of India.

10.Hence the Civil Revision Petition is dismissed. No costs. C.M.P.No.7815/2004 is also dismissed.

11.Considering the fact that the suit is of the year 2002, the trial court is hereby directed to dispose of the suit O.S.No.378/2002 on merits within a period of four months from the date of receipt of copy of this order.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

sks

To

The District Munsif, Harur.

+1cc to M/s.V.R.Anna Gandhi,Advocate Sr 42224
+1cc to Mr.K.Thiruvengadam, Advocate Sr 41723

MS (CO)
km/19.10.

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